
JEFFERSON COUNTY MEDIATION SERVICES

Volunteer Colloquium Minutes

May 17, 2016

Volunteers Present: Neila Achter, Jaydee Bachman, Marta Cary-Skovrinski, Suzanne-Chambers-Yates, Calyn Crow, Jill Chase, Rogelio Flores, Lesley Geraci, Hazel Hanley, Matt Jarvinen, Samuel Jenkins, Linda Lautigar, Marianne Liza-Irwin, Nuria Lopez, Mary Mesch, Joel Scoville

Staff Present: Mark Loye, Julia Carter, Helena Jo Goldstein, Rachel Johnson

I. Welcome and Introductions

Mark Loye welcomed everyone to the meeting and asked those present to introduce themselves.

Helena Jo Goldstein announced that there will be a meeting for Small Claims Court and Division H mediators to discuss issues and answer questions. The meeting will be held at the Jeffco Courthouse on June 17, 8:30-10AM.

II. Discussion: Mediating Cases for Child Support Services (CSS)

Speakers: Margaret Davis, Assistant County Attorney assigned to CSS, Donna Gibbs, CSS court liaison, and Yolanda Redmond, CSS Paralegal

The purpose of this discussion was to clarify details and answer questions about mediation cases referred from CSS.

What Is Child Support Services?

Ms. Davis began by explaining what CSS does. CSS can establish paternity and support responsibilities, establish and enforce support orders, collect payments for established orders and arrears, and modify support orders. These services are available to all families and either a custodial or non-custodial parent can open a CSS case. The fee to open a case is \$20. Custodial parents who receive TANF or other public assistance are automatically referred to Child Support Services and paternity testing. (Government assistance programs require recipients to establish a child support order to reduce the government's support expense.) An individual may ask CSS to establish paternity; if the father is found, an order is established.

Child Support Services enforces support orders by means of administrative remedies. Common enforcement remedies used are tax intercepts and driver's license revocation. Child Support Services has the authority over administrative remedies, meaning courts cannot rule on those remedies. If CSS revokes a driver's license, then CSS is the only entity that can give it back. The idea is that support is for the child, not the parents. The goal is to have people employed and get money to the child.

Ms. Redmond covered more about CSS procedure. She explained that the person who opened the case at CSS may request that the case be closed. This is true even when the initiator of a paternity testing case is found to be the father. Child Support Services also has the authority to close a case without request from either party.

Ms. Davis and Ms. Redmond took a moment to appreciate mediators. They shared that they both spend a lot of time in court and from their perspective the courts really appreciate what mediators do. Mediation allows the courts to manage more cases.

Discussion between mediators and CSS speakers opened up, complex issues and topics were addressed and mediators had opportunities to ask questions.

Key Areas Addressed:

How Do Cases Get To Mediation?

CSS most often refers case to JCMS when there is disagreement over a support modification. CSS does not handle parenting time issues and therefore will refer a case when the parent has a CSS case and wants to talk about parenting issues such as out-of-state travel. Anytime the court requires a status conference CSS will refer the case to mediation since it is likely parties will be ordered to mediation.

Parenting Plans: DR Cases, JV Cases and Addendum A

Ms. Goldstein clarified the difference between court cases coded DR versus JV. If a case includes both a JV and DR court case, that means CSS started a case, which is the JV case, then one of the parties filed a case for Allocation of Parental Responsibilities (APR) or for a divorce, which is the DR case. If you see only a JV case, that means no APR or divorce case has been filed and the magistrate only has jurisdiction over child support. If there is only a DR case, that means parties filed for APR or divorce before CSS got involved and the judge in the case has jurisdiction over both parenting time and child support. Ms. Gibbs asked mediators not to do parenting plans on the ten page court form in JV cases, as they will not be accepted by the court. Mediators can include parenting-time agreements in an MOU. Ms. Gibbs suggested including phrases in the agreement to consolidate the JV case into an existing DR case if there is one. If parties want to do a full parenting plan, they need to open a DR case to file their agreement. Agreements are much cleaner if they are filed as part of a DR case, where the judge has the authority to rule on everything and not just child support. Having one case in court saves the parents, the Courts and CSS time and energy. If parties are concerned about the cost to open a DR case, they may ask to qualify for a waiver of the filing fees. Ms. Goldstein suggested referring parties to the Self-Help Center, located inside the courthouse, to get help with required court forms.

To further address parenting plans in JV cases, JCMS and the Jeffco judiciary drafted Addendum A. Ms. Goldstein explained that Addendum A is strictly a Jefferson County Addendum made possible because Jeffco magistrates have agreed to accept parenting-time agreements as long as parties have a clear understanding of the magistrates' limited jurisdiction. Ms. Davis went through Addendum A to explain what parties acknowledge when they sign. Most importantly, parties understand that the Court is only approving the parties' agreement and will not rule on issues that are meant to be handled under the jurisdiction of a DR case.

Modifications

To modify a child-support order the change in circumstances must be continuous and substantial, with at least a 10% increase or decrease. Child support can be modified as many times as parties want so long as there is a substantial change. If parties wish to take child-support matters to court they may have to wait a while to get a court date and a modification order. This is one reason that mediation is valuable to parties who want modifications done more quickly. Generally, parenting-time agreements can be modified every two years. As a result, mediators should work with parties to develop a realistic parenting plan that the parties can live with for the next two years.

Child Support Agreements & Worksheet Guidelines

CSS speakers urged mediators always to use and attach a child support worksheet when making agreements. Ms. Gibbs asked mediators not to get too creative with agreements. She understands parties want to be creative, but agreements need to be straightforward within the CSS system. Certain requirements need to be met so one party is not getting penalized for non-payments. Ms. Davis explained that the worksheet is a guideline and parties may deviate from the worksheet if the order calculated is shown to be unjust or that deviation is truly appropriate. Anything deviating more than \$100 is going to be iffy unless it is adequately explained. Deviations must be explained beyond "the best interest of the child". Explain *why* deviating from the guidelines is in the best interest of the child and what the situation of the parties is. Thorough explanations will increase the chances that court will approve the agreement. CSS asks that the mediators do not adjust the worksheet to come up with the agreed amount of child support, the Court will deny the MOU. By law, parents and even the courts cannot waive a support order. Only CSS has the power to waive a support order. Parties often want to negotiate informal support. Ms. Gibbs shared that sometimes a CP will agree to a lower support amount if the NCP is paying for things like camp, a car, etc. In that case it is okay to include in the agreement that parties will revisit the

agreement in 6 months. (It is important to understand that CSS can only collect the amount stated in the child support order.) If parties want part of support money to go to arrears or other child-related cost they would have to keep track of the amount themselves. Also, note that parties receive credit on the worksheet for other child support orders only if they are actually paying the support.

Often the only reason a child support modification is disputed is that parties just do not like the bottom line number. Ms. Redmond suggested asking parties specifically what it is they are not agreeing to on the worksheet. If they really do not like the final number they can always just go to court. Ms. Redmond also suggested sharing with unhappy NCP's that they can get a second job and any money earned from that job will not be assessed as income in the support order.

Arrears

Ms. Davis explained that arrears are overdue child support, sometimes going back years. Anytime there is an arrears balance there will be a tax intercept of any refund claimed on the tax return of the parent who is in arrearage. The IRS always pays any money owed to the state (outlays for child care assistance or food stamps, etc.) before releasing money to the parent who is owed child support. Any lottery winnings are intercepted by CSS. Every month that there is an unpaid balance, a judgment is set against that individual for 20 years. Even after a child is emancipated arrears do not go away. Parties can agree to waive arrears if the money is owed directly to the parent, but they cannot waive money owed to the state. When parties are negotiating a significant drop in an arrears balance, Ms. Davis suggested that mediators make sure the CP is not under distress or coercion. Keep in mind that the court has the right to deny an agreement if it deviates too far. Mediators can reinforce how paying an arrears balance can lead to a better life for the child. Another possibility is leaving the issue to be discussed later. It can also be used as a negotiating tool – the parties may agree that if the NCP pays a certain amount consistently for a set amount of time, the CP will agree to waive arrears.

Emancipation

In Colorado, for the vast majority of cases, the age of emancipation is 19 (support is due for the entire month of the child's birthday). Exceptions to the emancipation age include cases in which the child has special needs, has not graduated from high school yet, or for another reason requires continued support. If an order from another state is being enforced in Colorado, anything can be modified on that order *except* the emancipation age, which will permanently stay the same as the state of origin of the order. When child support is being paid for one child only, CSS terminates collection when that child emancipates, and no motion needs to be filed by the party with the court. (If any arrears are owed, CSS will continue collections.) If more than one child is covered by the order, one of the parties must file a motion to get the support recalculated. Otherwise, the old order will continue in place.

FSR vs. CSS

Family Support Registry (FSR) is not CSS, though people often get the two confused. FSR does not care how much support is paid; they simply record what has been paid. Their only concern is that they have a correct and current address for the parties. FSR does not have enforcement remedies. FSR can be a good solution for parties who want to have an impartial record of payments, even if they do not have a CSS case. FSR accounts can be set up even if one or both parties do not have a Social Security Number.

Paternity

The issue of paternity came up several times. Genetic testing alone is not a legal finding of paternity. If a non-biological father is considered the father to a child, it is likely he signed a birth certificate or made some other acknowledgement of "fatherhood" of the child. The only way someone can be taken off of a birth certificate is to get a court order. Monies received from the alleged father while waiting for results, whether it is given to the mother or the State of Colorado is not returned to the alleged father if he is deemed not to be the legal father.

2017 Statute Changes

Ms. Davis mentioned a statutory change coming in January 2017. This will allow decreases in the support orders of non-custodial parents when subsequent children are born. As the statute now stands, if CSS does the worksheet they are not allowed to give the NCP credit for after-born (non-joint) children, while they can give this credit to

CP. If the parties agree, JCMS mediators can put this credit into the worksheet, and ask the court to approve the resulting amount. Another pending change will allow credit to parents who care for children during the day but are not able to have overnights, for example, a parent who works evenings and therefore cannot care for the children overnight. Ms. Goldstein reiterated that these changes are not yet in effect, and JCMS will transmit information as it becomes available.

CSS Assistance to JCMS

Throughout the discussion CSS speakers welcomed feedback from mediators and offered assistance to make cases easier for everyone. Issues such as other orders parties may have, or arrears amounts, are not obvious to mediators and something they often have to ask parties for. CSS offered to include more information in the referral form they send to JCMS, which would allow staff to include more information in case descriptions sent out to mediators. Ms. Redmond said she would ask CSS techs to attach any motions to referrals so mediators are clear on what is in dispute. Motions can often include information that mediators have difficulty getting from parties or that parties do not have. The CSS speakers agreed that mediators are welcome to contact CSS technicians for any further information they need to mediate a case.

CSS Notebook

Ms. Goldstein introduced the resource notebook she has been putting together with CSS-related topics. She let mediators know that this notebook can be found on the front table where mediators pick up case files for mediation. Mediators may take the pages out and copy any of the information for themselves or for parties.

Mr. Loye thanked the three informative speakers, and everyone who attended for participating in the discussion, and wished all a good evening.

Next Colloquium: Tuesday, September 20, 2016, 6:00 – 8:00 p.m. in the Open Space Building. Topic to be determined. (The Colloquia are generally held on the third Tuesday of odd numbered months, but no meeting is held in July.) Suggestions for future topics are always welcome!

The meeting was adjourned.

Submitted by: *Rachel Johnson*

Rachel Johnson, Administrative Assistant

Approved by: *Mark Loye*

Mark Loye, Director